



June 2, 1999

Ms. Beth McBeth
Hale County Crisis Center, Inc.
P.O. Box 326
Plainview, Texas 79073-0326

OR99-1519

Dear Ms. McBeth:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 124709.

On March 8, 1999, the Hale County Crisis Center, Inc. (the "HCCC") received a request for eleven categories of information including daily logs, donation sheets, phone logs, phone billing records, board meeting minutes, executive director daily log sheets, and safe home director log sheets. You claim that the requested information is excepted from disclosure pursuant to section 552.103 of the Government Code, the "litigation exception." Before considering whether the requested information is excepted from disclosure, we must determine whether HCCC is a governmental body subject to the act.

The act requires "governmental bodies" to make public, with certain exceptions, information in their possession. Section 552.003 of the Government Code defines "governmental body," in part, as follows:

the part, section, or portion of an organization, corporation, commission, committee, institution, or agency that spends or that is supported in whole or in part by public funds.

Gov't Code § 552.003(1)(A)(x). The act defines "public funds" as "funds of the state or of a governmental subdivision of the state." Gov't Code § 552.003(5).

Courts, as well as this office, have previously considered the scope of the act's definition of "governmental body." In *Kneeland v. National Collegiate Athletic Ass'n*, 850 F.2d 224 (5th Cir. 1988), *cert. denied*, 488 U.S. 1042 (1989), the United States Court of Appeals for the Fifth Circuit recognized that opinions of the Texas Attorney General do not declare private persons or businesses "governmental bodies" subject to the act "simply because [the persons or businesses] provide specific goods or services under a contract with a government body." *Kneeland*, 850 F.2d at 228 (quoting Open Records Decision No. 1 (1973)). Rather, when

interpreting the predecessor to section 552.003 of the Government Code, the *Kneeland* court noted that the attorney general opinions generally examine the facts of the relationship between the private entity and the governmental body and apply three distinct patterns of analysis:

The opinions advise that an entity receiving public funds becomes a governmental body under the Act, unless its relationship with the government imposes “a specific and definite obligation . . . to provide a measurable amount of service in exchange for a certain amount of money as would be expected in a typical arms-length contract for services between a vendor and purchaser.” Tex. Att’y Gen. No. JM-821 (1987), *quoting* ORD-228 (1979). That same opinion informs that “a contract or relationship that involves public funds and that indicates a common purpose or objective or that creates an agency-type relationship between a private entity and a public entity will bring the private entity within the . . . definition of a ‘governmental body.’” Finally, that opinion, citing others, advises that some entities, such as volunteer fire departments, will be considered governmental bodies if they provide “services traditionally provided by governmental bodies.”

Id.

As the *Kneeland* court noted, when considering the breadth of the act’s definition of “governmental body,” this office has distinguished between private entities receiving public funds in return for specific, measurable services and entities receiving public funds as general support. For example, Open Records Decision No. 228 (1979) considered whether the North Texas Commission (the “commission”), a private, nonprofit corporation chartered for the purpose of promoting the interests of the Dallas-Fort Worth metropolitan area, constituted a “governmental body” under the act. Open Records Decision No. 228 at 1 (1979). The contract existing between the commission and the City of Fort Worth obligated Fort Worth to pay the commission \$80,000 per year for three years. *Id.* The contract obligated the commission to, among other things, “[c]ontinue its current successful programs and implement such new and innovative programs as will further its corporate objectives and common City’s interests and activities.” *Id.* at 2. Noting this provision, Open Records Decision No. 228 stated, “[e]ven if all other parts of the contract were found to represent a strictly arms-length transaction, we believe that this provision places the various governmental bodies which have entered into the contract in the position of ‘supporting’ the operation of the Commission with public funds within the meaning of section 2(1)(F).” *Id.* Accordingly, the decision found the commission to be a governmental body for purposes of the act. *Id.*

You inform us that HCCC receives grants of public funds from the Texas Department of Human Services (“TDHS”), the Office of the Attorney General, and the Criminal Justice

Division of the Office of the Governor. Having reviewed documents relating to these grants of public funds, we note that the public funds are used for the general support of HCCC. Furthermore, HCCC and TDHS have a common objective, providing services to victims of family violence, such that an agency-type relationship exists between HCCC and TDHS. *See* Hum. Res. Code § 51.001 *et seq.* For these reasons, we conclude that HCCC is a governmental body for purposes of the Public Information Act.

We now consider whether the information at issue is excepted from disclosure pursuant to section 552.103 of the Government Code. Section 552.103(a) excepts from disclosure information:

- (1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and
- (2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

The governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The governmental body must meet both prongs of this test for information to be excepted under 552.103(a).

To establish that litigation is reasonably anticipated, a governmental body must provide this office "concrete evidence showing that the claim that litigation may ensue is more than mere conjecture." Open Records Decision No. 452 at 4 (1986). Concrete evidence to support a claim that litigation is reasonably anticipated may include, for example, the governmental body's receipt of a letter containing a specific threat to sue the governmental body from an attorney for a potential opposing party.¹ Open Records Decision No. 555 (1990); *see* Open Records Decision No. 518 at 5 (1989) (litigation must be "realistically contemplated"). On the other hand, this office has determined that if an individual publicly threatens to bring suit

¹In addition, this office has concluded that litigation was reasonably anticipated when the potential opposing party took the following objective steps toward litigation: filed a complaint with the Equal Employment Opportunity Commission, *see* Open Records Decision No. 336 (1982); hired an attorney who made a demand for disputed payments and threatened to sue if the payments were not made promptly, *see* Open Records Decision No. 346 (1982); and threatened to sue on several occasions and hired an attorney, *see* Open Records Decision No. 288 (1981).

against a governmental body, but does not actually take objective steps toward filing suit, litigation is not reasonably anticipated. *See* Open Records Decision No. 331 (1982). Further, the fact that a potential opposing party has hired an attorney who makes a request for information does not establish that litigation is reasonably anticipated. Open Records Decision No. 361 (1983).

You contend that the requested information is excepted from disclosure under section 552.103 "due to anticipated litigation." You indicate that the requestor has hired an attorney, but you have not provided concrete evidence to support your claim that HCCC reasonably anticipates litigation involving the requestor. Therefore, HCCC may not withhold the requested information from disclosure pursuant to section 552.103. Absent a demonstration that compelling reasons exist for withholding the information, HCCC must release the information at issue to the requestor.

You state that "client names will have to be blacked out" before the records at issue can be released to the requestor. The act requires the release of all information not excepted from disclosure. You have not cited to, and we are not aware of, any provision of law that would generally require HCCC to delete client names from records. However, the fact that information is confidential by law or that its release would violate the common-law or constitutional privacy rights of a third party are compelling reasons for nondisclosure of the information. *See* Open Records Decision No. 150 (1977). If you believe that there are compelling reasons for withholding any of the records at issue, you should immediately submit those records to this office with arguments explaining why the records should be withheld. Otherwise, you must release the records to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 124709

encl. Submitted documents